CAHAYA IDEAL (M) SDN BHD

v.

ORANG-ORANG YANG MENDUDUKI RUMAH YANG DITANDA SEBAGAI "A3" DAN DIDIRIKAN ATAS SEBAHAGIAN TANAH YANG DIPEGANG DI BAWAH HAKMILIK CT 2733 LOT 2103, MUKIM PLENTONG, DAERAH JOHOR BAHRU, NEGERI JOHOR

HIGH COURT MALAYA, JOHOR BAHRU
ABDUL MALIK ISHAK J
[ORIGINATING SUMMONS NO: 24-492-1998]
16 NOVEMBER 1998

CIVIL PROCEDURE: *Stay of execution - Order sought to be stayed executed even before application for stay fixed for hearing - Whether application for stay merely academic*

CIVIL PROCEDURE: *Summary proceedings - Possession of land - Rules of the High Court 1980, O. 89 - Description of summary proceedings under O. 89 - When should O. 89 be used*

LAND LAW: *Trespass - Unlawful occupation - Self-help remedy open to landlords - Whether self-help remedies can be used to eject squatters - Whether self-help remedies bypasses need to obtain order of possession from court - When should self-help remedies be resorted to - Limitation to self-help remedies - Whether trespasser liable for assault if ejection resisted*

The plaintiff, upon inspecting a particular plot of land that they purchased, discovered that there were houses erected thereon without their permission nor consent and that these houses were occupied by unidentified illegal squatters. In respect of one particular house, the plaintiff proceeded by way of O. 89 r. 1 of the Rules of the High Court 1980 ('the RHC') for vacant possession of the said house. As the defendants failed to appear on the date set for the hearing of the said summary application, orders were made in favour of the plaintiff and they proceeded to extract and file the same. Subsequent to these events, the defendants filed this application praying for, *inter alia*, a stay of execution of the summary possession order granted to the plaintiff. Before this application by the defendants was even fixed for hearing however, the house in question had been demolished pursuant to the order of summary possession obtained by the plaintiff.

Held:

[1] At the point when this application by the defendants was heard, the order granting summary possession to the plaintiff had not been stayed at all. It remained a binding order which the defendants must comply forthwith.

[2] The order of the court granting summary possession of the land to the plaintiff was a good order and it had never been set aside nor stayed. With that order, the house in question had been demolished. Consequently, the defendants' application and the whole bone of their contention had become academic.

Per curiam:

[1] A person can use reasonable force to protect his possession by expelling another from his land who is or has become a trespasser. The only limitation is that no more than reasonable force should be used. In fact, a trespasser will be liable for assault if he resists ejection by force.

[2] Self-help remedies afford landlords innumerable methods of ousting defaulting tenants, the popular ones being cutting off water and electricity supplies. Landlords can also resort to self-help remedies to eject trespassers.

[3] Landlords can resort to self-help remedies as a means of bypassing the need to obtain a court order and to have a warrant of possession executed. There is always a risk of violence in a self-help situation because it places the landlord in a superior position over the trespasser.

[4] The self-help remedy should be vigorously adopted by landlords against stubborn trespassers who deliberately go into another person's land, put up a building and stay there leaving the landlords high and dry.

[5] Trespassers and squatters must be evicted expeditiously by landowners. The self-help remedy to evict trespassers *simpliciter* must surely be the expeditious mode to adopt provided the landowners act prudently and use no more than reasonable force.

[6] Order 89 of the RHC can be described as a summary remedy for possession by an order of the court. It is an enabling provision where the landowner can seek an order for possession against an unlawful occupier. The order does not apply to tenants holding over after the expiry of the tenancy.

[7] The words in O. 89 r. 1 of the RHC are clear. Once the occupiers do not come under the exclusion clause stated therein, namely "not being a tenant or tenants holding over after the termination of the tenancy", then, the question of triable issues are totally irrelevant.

[7a] It would be in rare cases where substantial issues or triable issues would arise in O. 89 applications.

[8] Counsels are, as a matter of confidence, under a duty to bring to the attention of the court all authorities and enactments directly relevant to the question in issue whether or not they support the case for their clients.

[Application dismissed.]

Cases referred to;

Ambergate Railway v. Midland Railway [1853] 2 E & B 793 ***(aff)***
Bohari Taib & Ors v. Pengarah Tanah & Galian Selangor [1991] 1 CLJ 781 ***(cit)***
Bohari Taib & Ors v. Pengarah Tanah & Galian Selangor [1991] 1 MLJ 343 ***(refd)***
Bristol Corpn v. Ross [1973] 3 All ER ***(aff)***
Bristol Corpn v. Persons Unknown [1974] 1 All ER 593 ***(refd)***
Clifton Securities v. Huntley [1948] 2 All ER 283 ***(refd)***
Edwick v. Hawkes [1881] 18 Ch D 169 ***(aff)***
Glebe Sugar Refining Co Ltd v. Trustees of the Post and Harbours of Greenock [1921] 37 TLR 436 ***(aff)***
Greater London Council v. Jenkins [1975] 1 All ER 354 ***(refd)***
Henderson v. Law [1984] 17 HLR 237 ***(aff)***
Hotel Ambassador v. Seapower (M) Sdn Bhd [1991] 1 CLJ 656 ***(cit)***
Low Kee Ying v. Chou Yek Ying [1971] 1 MLJ 151 ***(refd)***
McPhail v. Persons Unknown ***(aff)***
Minister of Health v. Belloti [1944] 1 All ER 238 ***(refd)***
Mohd Rawi Yaacob v. Federal Land Development Authority ***(cit)***
Neoh Siew Eng v. Teoh Chee Kwong [1963] MLJ 272 ***(refd)***
Scott v. Mathew Brown & Co [1885] 51 LT 746 ***(aff)***
Taunton v. Costar [1797] 7 TR 431 ***(aff)***
Titular Roman Catholic Bishop of Malacca v. Teoh Teik Seng [1990] 2 CLJ 306 ***(aff)***
Trustees of Leong San Thong v. Poh Swee Siang [1987] 2 CLJ 302 ***(aff)***
Trustees of Leong San Thong v. SM Idris & Ors [1990] 1 CLJ 723 SC ***(cit)***
Weaver v. Bush [1798] 8 TR 78 ***(aff)***
Wee Choo Keong v. MBF Holdings Bhd & Anor & Another Appeal [1993] 2 MLJ 217 ***(foll)***

Legislation referred to:

Rules of the High Court 1980, O. 89 r. 1
Specific Relief Act 1950, ss. 7, 8
English Rules [UK], O. 113

Other source referred to:
The Role Of The Advocate In Our Society, Right Honourable Lord Alexander of Weedon QC, [1992] 1 MLJ xxxvii, p xxxix

For the plaintiff - Madam Goh Mey Foon; M/s Leng & Co
For the defendant - Madam Mathimugam Karuppannan; M/s Nassir & Co

Reported by S Dharmendran

JUDGMENT

Abdul Malik Ishak J:

This was a proceeding for possession of land under O. 89 r. 1 of the Rules of the High Court 1980 ("RHC") by the plaintiff against the defendants as seen in encl. 3. There were several prayers in encl. 3 and a verbatim reproduction of those prayers should be made. They were:

(a) Plaintif diberi milikan kosong rumah ["Rumah tersebut"] yang didirikan atas sebahagian tanah yang dipegang di bawah hakmilik CT 2733 Lot 2103, Mukim Plentong, Daerah Johor Bahru, Negeri Johor, yang ditandakan sebagai "A3" pada pelan tanah dan yang gambarnya dilampirkan dan masing-masing ditanda sebagai 'A' dan 'B';

(b) Defendan-defendan dikehendaki mengosongkan Rumah tersebut dalam masa 14 hari dari tarikh perintah yang dipohon dalam permohonan ini diberi oleh Mahkamah yang mulia ini;

(c) Kos bagi permohonan ini dan kos sampingan baginya dibayar oleh Defendan-defendan; dan

(d) Relief selanjutnya yang difikirkan adil dan suaimanfaat oleh Mahkamah ini.

Enclosure 3 was supported by an affidavit of Wong Chan Thong ("Wong") that was affirmed on 6 April 1998 and filed on the same date. Wong's affidavit can be seen in encl. 2 and there he deposed that on 15 August 1992 the plaintiff became the registered proprietor of a piece of land held in CT 2733, Lot 2103, Mukim Plentong, in the district of Johor Bahru, in the State of Johore ("land"). A photostat of the certificate of title to the land was marked as exh. "WCT-1". Wong deposed that the land was inspected and the plaintiff found houses that were built and occupied without the permission nor consent of the plaintiff. One of the houses was marked as "A3" in the layout plan (exh. "WCT-2") and as shown in the photograph (exh. "WCT-3"). Wong deposed that those persons that occupied the house as shown in the photograph did so without the permission nor consent of the plaintiff. Wong verily believed that those persons were illegal squatters who trespassed on the land and which trespass was still continuing. It seemed that the trespassers had trespassed on the land since the land was left unattended. On 17 February 1998 Messrs Leng & Co sent a notice to the occupiers of the house marked as "A3" in the layout plan to:

(a) demolish and/or pull down the house/structure and thereafter clear and remove all debris from the land; and

(b) vacate the land,

at their own costs and expense within seven days from the date of that notice. That notice also carried in strong terms the following:

> TAKE NOTICE that if you fail to do so within the time stipulated in this notice, our client will institute legal action against you for demolition of the house/structure and recover vacant possession of the land and to claim all losses; damage, costs and expenses that our client may suffer or incur without further notice to you.

It was deposed that the plaintiff's two clerks by the name of Abdul Aziz bin Abu Bakar and Md. Noor Azam bin Ahmad from Messrs Leng & Co together with an officer by the name of Mohd. Isa bin A. Rahman from the plaintiff attempted to serve the notice to the occupants of the house on 17 February 1998 but they were prevented and obstructed by an Indian man by the name of G. Manokaran a/l Govindasamy. The three personalities have since sworn a joint statutory declaration to that effect as seen in exh. "WCT-5" of encl. 2. That statutory declaration is a worthwhile piece of reading material. The relevant paragraphs of the statutory declaration are now reproduced:

> 2. We were instructed and authorised by Cahaya Ideal (M) Sdn. Bhd. and its solicitors, Messrs Leng & Co., to serve the notice dated 17.2.1998 ["the Notice"] on the occupiers of the house/structure unlawfully erected on part of the land held under Lot 2103 Mukim Plentong and identified as "A3" in the Notice ["the Said House"].
>
> 3. We did on 17.2.1998 at about 2.30 p.m. try to serve a similar notice to quit on the occupiers of the house/structure identified as "A1" but was stopped by one Indian man who identified himself as G. Manokaran A/L Govindasamy. After listening to the advice by G. Manokaran A/L Govindasamy, the Indian occupier of the house/structure identified as "A1" refused to accept the notice to quit and refused to allow us to leave a copy of the same at the house/structure concerned.
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> 4. At about 4.00 p.m. of the same day, another attempt was made by us to serve the notice to quit on the occupiers of the house/structure identified as "A4" but was again prevented from doing so by G. Manokaran A/L Govindasamy. The Indian occupier of the house/structure identified as "A4" also refused to accept the notice to quit and did not allow us to leave a copy of the said notice at the house/structure identified as "A4".
>
> 5. G. Manokaran A/L Govindasamy had further stopped and prevented us from serving other notices on the other surrounding houses/structures.
>
> 6. We therefore did not proceed to serve, *inter alia*, the Notice.

7. We make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1960.

To date the occupiers of the house in question refused to vacate the premises. Wong deposed that the plaintiff did not know the names of those individuals that occupied the house. Wong then prayed that vacant possession be granted to the plaintiff in regard to the said house that stood on the land.

The plaintiff took no chances and filed encls. 4, 5 and 6. These enclosures showed that encls. 3 and 2 were served on the defendants by the process server of the High Court by two methods. One was by leaving encls. 3 and 2 at the house in question. The other was by pasting encls. 3 and 2 at the front door of the house in question. The defendants ought to know that the hearing of encl. 3 supported by an affidavit in encl. 2 was scheduled on 19 May 1998 at 9am but, unfortunately, the defendants failed to turn up on that day and so Madam Goh Mey Foon, learned counsel for the plaintiff, sought for an order in terms of the prayers in encl. 3 particularly prayers (a), (b) and (c). I acceded to her requests and made orders to that effect accordingly. The order has since been extracted and filed on 25 May 1998 as seen in encl. 9.

The plaintiff dutifully followed the law by resorting to O. 89 of the RHC and filing encl. 3 in this court. It was said that:

> The house of every one is to him as his castle and fortress, as well as for his defence against injury and violence, as for his repose ... . (see *Semayne's Case* [1604] 5 Co R 91 a at page 91b; 77 ER 194 at page 195).

The courts in *Weaver v. Bush* [1798] 8 TR 78; 101 ER 1276 and in *Taunton v. Costar* [1797] 7 TR 431; 101 ER 1060 were quite bold. It gave a clout to a landowner when it laid down a principle that a person can use reasonable force to protect his possession by expelling another from his land who is or has become a trespasser. This means that the English common law way back in 1797 gave the owner the right to throw out anyone who trespasses on his land. And it seems that the only limitation to this very liberal approach was that no more than reasonable force should be used (*Edwick v. Hawkes* [1881] 18 Ch D 169 and *Scott v. Mathew Brown & Co* [1885] 51 LT 746). What is interesting is this. The trespasser will be liable for assault if he resists ejection by force (*Ambergate Railway v. Midland Railway* [1853] 2 E & B 793).

Lord Denning in *Clifton Securities v. Huntley* [1948] 2 All ER 283 made reference to the self-help remedy accorded to the landlord. There his Lordship held the view that despite the grant of a stay of execution for an order of possession, the landlord could resort to overcoming the stay by physical re-entry. His Lordship suggested that (at p. 284 of the report):

> The plaintiffs must not enter by a strong hand with a multitude of people so as to be guilty of a criminal offence but, even if they do, it does not give the defendants a civil action for damages.

The self-help remedies afford landlords innumerable methods of ousting defaulting tenants; the popular ones being cutting off water and electricity supplies (*Neoh Siew Eng v. Teoh Chee Kwong* [1963] MLJ 272 and *Low Kee Ying v. Chou Yek Ying* [1971] 1 MLJ 151). Wong emphasised in his affidavit in encl. 2 that there were illegal squatters that had trespassed on the land. Landlords too can resort to the self-help remedies against trespassers. Wong did say in his affidavit that the land was left unattended. To me, absentee land owners merely encourage trespassers. In England, there is an equivalent to our O. 89 of the RHC and it is O. 113 of the English Rules which entitles a landowner to obtain a summary order for possession. Notwithstanding the existence of O. 113 of the English Rules, Lord Denning affirmed the principle of self-help as against trespassers in *McPhail v. Persons Unknown; Bristol Corpn v. Ross* [1973] 3 All ER particularly at pp. 393 and 396 b-d when his Lordship said:

> Now I would say this at once of about squatters. The owner is not obliged to go to the courts to obtain possession. He is entitled, if he so desires, to take the law into his own hands. He can go in himself and turn them out without the aid of the courts of law. This is not a course to be recommended because of the disturbance which might follow ... . The owner was not civilly liable because the owner is entitled to turn out a trespasser using force, no more than is reasonably necessary ..... .

In the Malaysian context the self-help remedy accorded to the landlord was recognised by our very own Supreme Court in *Trustees of Leong San Thong (Khoo Kongsi) v. Poh Swee Siang* [1987] 2 CLJ 302; [1987] 2 MLJ 511. In that case, the ground tenant sued the landlord for damages for trespass. The trial judge made a specific finding that the tenancy was validly terminated by a month's notice to quit. The Supreme Court aptly held that upon such termination, the plaintiff was nothing more than a mere trespasser and so the landlord was entitled to invoke the remedy of self-help. The Supreme Court outrightly rejected the contention that the provisions of ss. 7 and 8 of the Specific Relief Act 1950 excluded the remedy of self-help. The Supreme Court was of the view that these provisions were only enabling provisions which may be resorted to if the landlord elected to proceed by way of a court action. The Supreme Court also held the view that notwithstanding the fact that the dispossessed occupier may bring an action against the landlord, it did not prohibit the landlord from resorting to the concept of self-help. The Supreme Court refused to follow the Indian cases on the interpretation of the Indian Specific Relief Act 1963. The Supreme Court held, *inter alia*:

> Our courts have consistently subscribed to the principle that one who has the right to enter upon another's land and act in excess of that right or after his right is expired is a trespasser – *Sidek bin Haji Mohamed & Ors v. The Government of Perak* [1982] 2 MLJ 313 and *Letchumi Ammal v. Nam Fong Housing Sdn Bhd* [1982] 2 MLJ 19.

It must be emphasised that the landowner in regaining possession of his land in *Trustees of Leong San Thong (Khoo Kongsi) v. Poh Swee Siang (supra)* came with a large number of people watched by policemen which finally resulted in the death of a woman farmer. Adverse comments followed the decision of the Supreme Court in *Trustees of Leong San Thong (Khoo Kongsi) v. Poh Swee Siang (supra)* and this resulted in the contempt proceedings *(Trustees of Leong San Thong (Khoo Kongsi) v. S.M. Idris & Ors* [1990] 1 CLJ 723; [1990] 1 MLJ 273 SC). The validity of the Supreme Court decision can never be questioned and the Supreme Court reiterated the validity of their approach in *Trustees of Leong San Thong (Khoo Kongsi) v. Poh Swee Siang (supra)* in a subsequent case, namely *Hotel Ambassador v. Seapower (M) Sdn Bhd* [1991] 1 MLJ 404, [1991] 1 CLJ 656 (SC). Of course, with the decisions of the Supreme Courts temptations are rife. Landlords can resort to self-help remedies as a means of by passing the need to obtain a court order and to have a warrant of possession executed. There is always a risk of violence in a self-help situation. It places the landlord in a superior position than the trespasser. But the present plaintiff here chose to obtain a court order under O. 89 of the RHC and they are entitled to be heard. The courts are always open to everyone. Lord Greene M.R. once remarked in *Minister of Health v. Belloti* [1944] 1 All ER 238 (CA), 245:

> I cannot leave this case without saying one word about the circumstances which led up to the litigation because they may have a bearing on other matters ... The courts of this country are open, and where persons are to be ejected from premises which they have lawfully occupied, the general expectation and hope would be that recourse would be had to the courts rather than to the highhanded method of ejectment by force ... I do not think that that particular incident is one to which those responsible for it will look back with any sense of self-congratulation. As I have said, the courts are open, and it is to be hoped that that type of action will not be regarded as a precedent.

But, I venture to say that there are stubborn trespassers who deliberately go into another person's land, put up a building and stay there leaving the landlords high and dry. It is against these trespassers that the self-help remedy should be vigorously adopted by the landlords.

Now, reverting back to O. 89 of the RHC it can be described as a summary remedy for possession by an order of the court. It is an enabling provision where the landowner can seek an order for possession against an unlawful occupier. The parameters of O. 89 are clearly set out in r. 1 thereof which states:

> Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.

and obviously this Order does not apply to tenants holding over after the expiry of the tenancy (*Titular Roman Catholic Bishop of Malacca v. Teoh Teik Seng* [1990] 2 CLJ 306). The case of *Bohari bin Taib & Ors v. Pengarah Tanah & Galian Selangor* [1991] 1 MLJ 343 (SC) reversing the decision of Shankar J in [1991] 1 CLJ 781, is a classic example of an O. 89 application. Briefly, the facts in that case were as follows. There the appellants were in occupation of state land. Their temporary occupation licences issued by the state, had expired. The Director of Lands and Mines swiftly acted and applied to the court under O. 89 of the RHC for an order of possession. Shankar J at first instance gave the order. On appeal, Mohd. Azmi SCJ speaking for the Supreme Court held that there were triable issues and his Lordship said at p. 346 of the report:

> In our opinion, for the purpose of the summary procedure, a distinction should be made between squatters simpliciter who have no rights whatsoever, and occupiers with licence or consent, and as well as tenants and licensees holding over.

This passage has attracted wide attention and seems to limit the application of O. 89 of the RHC. It states that O. 89 is only applicable to true trespassers namely to those who entered the land without the consent of the land owner. At p. 345 of the report his Lordship Mohd. Azmi SCJ said in *Bohari bin Taib & Ors v. Pengarah Tanah & Galian Selangor (supra)*:

> They claim that they are not squatters of state land in the popular and normal sense, but are either licensees holding over or lawful occupiers of state land with the continued consent of the State Executive Council under the approved alienation. If their occupation of the land is with the continuing consent, implied or expressed, of the state authority, then notwithstanding the expiry of their TOLs, Order 89 is not the proper procedure to be adopted.

His Lordship Mohd Azmi SCJ relied on the decision of *Mohd Rawi bin Yaacob v. Federal Land Development Authority (an unreported decision)* to hold onto the point "that where the entry to the land was lawful and where there are triable issues", then O. 89 of the RHC was inapplicable. I am certainly bound by the decision of the Supreme Court in *Bohari bin Taib's* case but the words in r. 1 of O. 89 of the RHC as reproduced earlier are too clear for argument. Once the occupiers do not come under the exclusion clause of r. 1 of O. 89 of the RHC, namely "(not being a tenant or tenants holding over after the termination of the tenancy)" then, in my view, the question of triable issues are totally irrelevant.

Perhaps at this juncture, reference to the case of *Bristol Corpn v. Persons Unknown* [1974] 1 All ER 593 should be ideal. That was an English case and it was argued that O. 113 r. 1 did not apply to an overloading licensee after his licence had been terminated. Pennycuick VC at p. 596 remarked:

> ... it seems to me ... that Order 113 rule 1, on its plain terms does apply to the case of a person who has entered into the land with consent and remains in occupation without consent ... The words 'or remained' must have some further meaning than to state what is perfectly obvious, namely, that an order can never be sought against someone who has entered into occupation of the land and then left it. I cannot myself see any reason why that disjunctive expression 'or remained' should not bear its plain meaning and cover someone who has entered with a licence and remained in occupation without a licence.

and this very passage received the approval of the English Court of Appeal in the case of *Greater London Council v. Jenkins* [1975] 1 All ER 354 CA, but Lord Diplock who sat in the Court of Appeal disagreed with Pennycuick V.C. that there was a discretion whether to make the order or otherwise. According to Lord Diplock there was no such discretion. This was what Lord Diplock said at p. 356 of *Greater London Council v. Jenkins (supra)*:

> Pennycuick VC pointed out that it is clear beyond a peradventure that this order applies to cases where a person who is alleged to be a trespasser was previously on the premises by licence.
>
> In the course of his judgment in that case Pennycuick VC did suggest that the judge or the court had a discretion whether to permit this summary procedure to be used in cases where there had been, as in this case clearly, a licence to occupy originally. For my part, I am unable to see that the court has discretion to prevent a plaintiff using this procedure where the circumstances are those described in the rule. I personally would disagree that the court has any discretion to prevent the use of this procedure where circumstances are such as bring them within its terms.

It would be in rare cases where substantial issues or triable issues would arise in O. 89 applications. Griffiths LJ once remarked in *Henderson v. Law* [1984] 17 HLR 237 (CA), 241:

> There will obviously be cases in which, although proceedings are started by way of a summary procedure, it quickly becomes apparent that a substantial issue has to be tried. If it was apparent to the applicant that a serious issue was bound to arise as to whether a tenancy or holding over existed, no doubt a judge would regard the use of the summary procedure inappropriate; or even dismiss the application; but I would expect such cases to be rare, because I would not anticipate that solicitors would seek to steal a march by using an inappropriate procedure. From time to time there are bound to be cases such as this where, from the applicant's point of view, an unexpected issue surfaces which raises the question of tenancy or holding over. In such cases the judge must exercise his discretion

> and decide whether it is wiser to continue the summary hearing, or to adjourn it for a further hearing after the parties have had a chance to reconsider the position, or possibly to dismiss the application and leave the applicant to have the issues determined in a subsequent action. But merely because a respondent chooses, without warning, to assert there is either a tenancy or holding over cannot of itself be a sufficient reason to say that the use of the Order 113 was an inappropriate procedure. In the present case the assistant recorder was ... entitled to determine the issue of a surrender or a holding over in the Order 113 proceedings.

Trespassers and squatters must be evicted expeditiously by the landowners. The self-help remedy to evict trespassers simpliciter must surely be the expeditious mode to adopt provided the landowners act prudently and use no more than reasonable force (*Trustees of Leong San Thong (Khoo Kongsi) v. Poh Swee Siang (supra)*). The plaintiff here chose the cumbersome method to oust the defendants.

So much for the law. I will now revert to the facts of the instant case.

On 15 June 1998, encl. 12 came up for hearing. On that date Miss L.Y. Oon appeared for the plaintiff while the defendants were represented by Mr. E.M. Yohevel from Messrs Nassir & Co. Enclosure 12 was filed by the defendants and it sought for several prayers, namely:

(a) Defendan-defendan dalam tindakan ini yang tidak dinamakan sebagai defendan yang sedang menduduki rumah tersebut diberi kebenaran untuk dinamakan sebagai defendan dalam tindakan ini dan untuk didengar mengenai soalan sama ada suatu perintah milikan kosong patut dibuat terhadap mereka;

(b) Bahawa Perlaksanaan Perintah Pemilikan di bawah Aturan 89 bertarikh 19/5/98 digantungkan perlaksanaannya sehingga pendengaran permohonan ini;

(c) Bahawa Perintah Pemilikan tersebut di ketepikan;

(d) Bahawa Defendan diberi kebenaran memfailkan Affidavit Jawapannya; dan

(e) Kos dalam kausa.

and it was supported by an affidavit in encl. 11 of Narayenna Moorthy a/l Thaliappan that was affirmed on 28 May 1998 and filed on 1 June 1998. Enclosure 12 was supported by a certificate of urgency that was dated 28 May 1998 and filed on 1 June 1998. Mr. E.M. Yohevel sought for an order as per prayer (a) of encl. 12 and since Miss L.Y. Oon agreed, an order to that effect was made. Mr. E.M. Yohevel then prayed for an adjournment for the hearing of prayers (b), (c), (d) and (e) which was readily agreed by Miss L.Y. Oon. This court then set the date for hearing of encl. 12 prayers (b), (c), (d) and (e) to 26 August 1998.

It must be borne in mind that, at this juncture, the order of this court dated 19 May 1998 in favour of the plaintiff in regard to prayers (a), (b) and (c) of encl. 3 had not been stayed at all. It remained a binding order which the defendants must comply forthwith. As I said that order can be seen in encl. 9.

Now, on 26 August 1998 when encl. 12 was scheduled for hearing Madam Goh Mey Foon appeared for the plaintiff and she mentioned on behalf of Mr. E.M. Yohevel who acted for the defendants. According to Madam Goh Mey Foon, Mr. E.M. Yohevel requested for an adjournment to seek further instructions from his clients (referring no doubt to the defendants) as to whether to withdraw encl. 12 as it had become academic. She then requested for a month's adjournment and this court adjourned the hearing of encl. 12 to 9 October 1998.

Again, for fear of repetition and in an attempt to lay stress, the order of this court dated 19 May 1998 pertaining to prayers (a), (b) and (c) of encl. 3 had not been stayed. It remained a good order.

On 9 October 1998 this court convened. On that date Madam Goh Mey Foon appeared for the plaintiff while Madam Mathimugam Karuppannan appeared for the defendants. It was for the hearing of encl. 12 particularly for prayers (b), (c), (d) and (e) thereof. Madam Goh Mey Foon nonchalantly told this court that the house in question had been demolished on 10 June 1998 before encl. 12 was even fixed for hearing. Indeed that the hearing of encl. 12 had become academic must be known to Mr. E.M. Yohevel. The notes of evidence for 15 June 1998 and 26 August 1998 sessions bore out these facts clearly. Be that as it may, Madam Goh Mey Foon submitted that since the issue of a stay had become academic, she sought for the dismissal of prayers (b), (c), (d) and (e) of encl. 12. Madam Mathimugam Karuppannan was rather docile and argued half heartedly. But she was rather magnanimous at the bar, a trait which is fast diminishing these days. Madam Mathimugam Karuppannan left the question of being academic entirely to this court and she submitted as follows:

> I know I am going on an uphill task. I know it is academic now. I know there is no leg for the defendants to stand on. I know that the house was demolished on 10.6.98 in accordance with the law as the order of vacant possession was obtained on 19 May 1998.

and these short submissions put an end to the whole matter. As an advocate and solicitor, Madam Mathimugam Karuppannan certainly has discharged her legal obligations to the court. These are legal obligations which she owed to the court as distinct from her obligations to her clients. The observance of these obligations would surely see better days for the legal profession. The House of Lords used to say that solicitors and counsels were as a matter of confidence under a duty to bring to the attention of the House all authorities and enactments directly relevant to the question in issue whether or not they support the case for their clients (*Glebe*

Sugar Refining Co. Ltd v. Trustees of the Post and Harbours of Greenock [1921] 37 TLR 436 HL). Likewise here in submitting that the whole matter had become academic, Madam Mathimugam Karuppannan was in fact telling the whole truth to this court and such an attitude should be applauded.

In an article entitled *"The Role Of The Advocate In Our Society"* by the Right Honourable Lord Alexander of Weedon QC [1992] 1 MLJ xxxvii, the learned author said at p. xxxix:

> This duty to serve the client, however fiercely it must be fulfilled, is tempered by the advocate's duty to the court. As Lord Diplock said:
>
> > The special characteristic of a barrister's work upon which the greatest stress is laid is that he does owe a duty also to the court. This is an over-riding duty which he must observe even though to do so in a particular case may appear to be contrary to the interests of his client.
>
> Thus a barrister must never mislead or misguide the court, and must resist attempts at distortion. This also means, as Lord Birkenhead said in 1921, that previous decided cases:
>
> > ... which bear one way or another upon matters under debate shall be brought to the attention of the court by those aware of those authorities .... irrespective of whether or not the particular decision assists the party who is aware of it. It is an obligation of confidence between the court and all those who assist in the capacity of counsel.

These passages clearly show the onerous duty of counsel to not only his client but also to the court. Towards this end, Madam Mathimugam Karuppannan passed the test with flying colours.

On the existence of the order of this court dated 19 May 1998 which had not been stayed, I am reminded of the sage words of Tun Abdul Hamid Omar, Lord President of the Supreme Court, in the case of *Wee Choo Keong v. MBF Holdings Bhd & Anor And Another Appeal* [1993] 2 MLJ 217:

> It is established law that a person against whom an order of court has been issued is duty bound to obey that order until it is set aside. It is not open for him to decide for himself whether the order was wrongly issued and therefore does not require his obedience. His duty is one of obedience until such time as the order may be set aside or varied. Any person who fails to obey an order of court runs the risk of being held in contempt with its attendant consequences.

The order of this court dated 19 May 1998 as extracted in encl. 9 was a good order and it was never set aside. With that order the house was legally demolished and so the whole bone of contention became academic.

For the reasons adumbrated above, I dismissed encl. 12 prayers (b), (c) and (d) with costs.